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Office Supreme Court U. S.
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JAMES H. MCKINNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

No. [redacted]192

JOHN J. ALLEN, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

NOTICE OF MOTION
AND
SUGGESTION OF DIMINUTION OF RECORD.

LANCASTER & SMITH,
Counsel for Appellant,
1419 G STREET, N. W. WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

JOHN J. ALLEN, Appellant,
vs.
THE UNITED STATES, Appellee. } No. 569.

NOTICE OF MOTION.

TO THE HONORABLE
WILLIAM H. MOODY,
ATTORNEY GENERAL OF THE UNITED STATES.

SIR:

Please take notice that we shall make a motion before the Supreme Court of the United States, at its Court Rooms in the Capitol in the City of Washington, District of Columbia, on the 22nd day of January, A. D. 1906, at 12 o'clock M., or as soon thereafter as counsel can be heard, that the plaintiff and appellant in this cause have a writ of certiorari for diminution of record herein, as per attached Suggestion of Diminution of record which will be presented to said Court at such hearing, a copy of which is herewith served upon you.

CHARLES C. LANCASTER,
HERBERT E. SMITH,
Counsel for Appellant.

Dated Washington, D. C., January 15th, 1906.

Due and personal service of a copy of the within motion and notice is accepted this 16th day of January, A. D. 1906.

HENRY M. HOYT,
Solicitor General U. S.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

JOHN J. ALLEN, Appellant,
vs.
THE UNITED STATES, Appellee. } No. 569.

SUGGESTION OF DIMINUTION OF RECORD.

Now comes John J. Allen, appellant, by Charles C. Lancaster, his counsel, and suggests to the Court a diminution of the record in this cause, in this, to wit:

I.

The Court of Claims omitted from its second findings of fact the various orders of the Circuit Court of the United States for the Eastern District of New York, being Exhibits C(2) and D(2) approving similar accounts of claimant covered by this suit for several years prior and subsequent thereto, as well as the order of approval by said Court of the accounts of the United States Marshal, United States Attorney, United States Clerk and other United States Commissioners for the Eastern District of New York, which were duly requested to be found by claimant in his request for findings of fact, and not objected to by counsel for defendant, as shown by the record in the Court of Claims, all of which is omitted from the transcript.

II.

The Court of Claims omitted from its fourth findings of fact Exhibits B(1 and 2). D(1) and E, being Report of the Department of Justice, Reports of the United States Attorney and United States Marshal and sworn Report of claimant to the Comptroller of the Treasury in settlement of his

accounts included in this suit, which were duly requested to be found by claimant in his requests for findings of fact and not objected to by counsel for defendant, as shown by the record in the Court of Claims, all of which is omitted from the transcript.

Wherefore, the said John J. Allen moves the Court, under rule 14, to award a writ of certiorari to be issued and directed to the judges of said Court of Claims, commanding that, searching the record and proceedings in said cause, they forthwith certify to this Court that part of said record so omitted as aforesaid. This motion is made for the reasons:

1. The Exhibits in item 1, being the orders of Court approving various similar accounts of the claimant and other officers of the Circuit Court of the United States for the Eastern District of New York, are material and conclusive in showing the uniform practice of the Court in approving accounts of the claimant in this suit and that the said order referred to and included in finding II of the Court of Claims was not an unusual or exceptional order, as found by the Court of Claims.

The claimant contends that the accounts so approved is *prima facie* evidence of the correctness of the items in the accounts, and in the absence of clear and unequivocal mistake on the part of the Court is conclusive.

Jones *vs.* U. S., 134 U. S., 483.
U. S. *vs.* Nix, 189 U. S., 775.

2. The records and reports contained in Exhibits B(1 and 2),——D(1)——and E show the uniform and continued action and custom of the United States Marshal, United States Attorney for the Eastern District of New York, the Department of Justice and the accounting officers of the Treasury, in investigating the prosecution of offences under the election law and the services rendered by the claimant contained in his accounts for the period of some twenty years, and conclusively show that said accounts were not paid by mistake

as found by the Court of Claims, nor illegally paid as referred to in said Court's opinion.

Uniform and uninterrupted practice and custom of the Department for many years has the force of law and these facts should be before this Court in order to properly determine this question.

U. S. *vs.* McDermott, 140 U. S., 151, item 3.
U. S. *vs.* Finnell, 185 U. S., 236.

In the United States *vs.* Adams, 9 Wall., 661; U. S. *vs.* Alonzo Childs, et. al., 76 U. S., 664; The Central Pacific R. R. Co. *vs.* The United States, 26 Ct. Cls., 109–138 U. S., 84, and United States *vs.* Nix, 189 U. S., 775, the writ of certiorari was pointed out as the proper writ to bring up to the Court of error, on an allegation of diminution of outbranches of the record or other documents, and writings in the Court below, which have not been previously certified or sent.

CHARLES C. LANCASTER,
HERBERT E. SMITH,
Counsel for Appellant.

State of New York, }
Eastern District of New York, } ss.

John J. Allen, being first duly sworn, upon his oath, deposes and says that he is the appellant in this cause; that he has read the foregoing statements and knows the contents thereof, and that the same is true in substance and fact to the best of his knowledge, information and belief.

JOHN J. ALLEN.

Subscribed and sworn to before me this 26th day of December, A. D. 1905.

{ SEAL }

B. LINCOLN BENEDICT,
U. S. Comr.